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10/643,055	08/18/2003	Thomas K. Reusche	14809US02	3111
23446	7590	07/02/2004	EXAMINER	
MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			ZERR, JOHN W	
			ART UNIT	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/643,055

Applicant(s)

REUSCHE ET AL.

Examiner

John W. Zerr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 13,26 and 35-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12,14-25 and 27-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 13, 26 and 35-57 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 15 March 2004.

### *Drawings*

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the seal member interposed between the cover and the base (Claims 6, 19 and 31) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7, 10, 12, 14-17, 20, 23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Cushman (USPT 2,877,051). Cushman discloses a recirculating fountain positioned within a water retention structure capable of receiving and retaining water. The fountain comprises a main body positionable within a water retention area of the water retention structure. An agitator (14) is connected to a motor (24) housed within the main body. The agitator is connected to a distal end of a drive shaft (see Figure 2) that extends outwardly from the main body. The motor (24) rotates the agitator (14) in order to impart motion to water retained within the water retention structure. The fountain of Cushman is considered to be capable of being used in a basin of a birdbath, livestock water trough, swimming pool, water tower or pond. A support member (6) supports the main body above a bottom surface of the water retention structure. The motor (24) is energized through leads (52) and thus is considered to be capable of connecting to a standard electrical outlet. The agitator (14) comprises blades (20) that extend in a direction outward from a lateral surface of the drive shaft. The motor (24) is operatively connected to the proximal end of the drive shaft to rotatably drive the drive shaft and rotate the blades (20) in order to impart motion to water retained within the water retention structure (see Figures 1-4 and column 1 line 63-column 2 line 68).

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5. Claims 1-4, 7, 8, 12, 14-17, 20, 21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Haegeman (USPT 5,980,100). Haegeman discloses an apparatus for treating liquids comprising a water agitation system positioned within a water retention structure that receives and retains water. The system comprises a main body (12) positionable within a water retention area for the water retention structure and an agitator (20) operatively connected to a motor (16) housed within the main body (12). The agitator (20) is connected to a distal end of a drive shaft (24) extending outwardly from the main body (12). The motor (16) rotates the agitator (20) in order to impart motion to water retained within the water retention structure. The apparatus of Haegeman is considered capable of being used in a basin of a birdbath, a livestock water trough, a swimming pool, a water tower or a pond. A plurality of legs (26) extend downward from the main body (12) and act as a support member capable of supporting the main body (12) above a bottom surface of the water retention structure. The agitator (20) comprises a blade assembly of at least one blade extending outwardly from a lateral surface of the drive shaft (24) rotatably driven by the motor (16) in order to rotate the blade assembly so as to impart motion to water retained within the water retention structure. The motor (16) is operatively connected to a proximal end of the drive shaft (24) (see Figure 1 and column 2 line 39-column 3 line 6).

6. Claims 1-6, 9, 12, 14-19, 22 and 25 rejected under 35 U.S.C. 102(b) as being anticipated by Wright (USPT 4,166,086). Wright discloses an aerator for live bait bucket comprising a water agitation system capable of being positioned within a water retention structure that receives and retains water. The system comprises a main body positionable within a water retention area of the water retention structure. An agitator (16) is operatively connected to a

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motor (14) housed within the main body. The agitator (16) is connected to a distal end of a drive shaft (18) that extends outwardly from the main body. The motor (14) rotates the agitator (16) in order to impart motion to water retained within the water retention structure. The aerator of Wright is considered to be capable of being used in a basin of a birdbath, a livestock water trough, a swimming pool, a water tower or a pool. The motor (14) is waterproofed to prevent damage (column 3 lines 57-60). It is considered, then, that the main body comprises a base (12) removably secured to a cover that encases the motor (14) in an inner compartment defined between the cover and the base (12) with a seal member interposed between the cover and the base (12). The motor (14) comprises contacts (24,26) to connect the motor (14) to a battery. The agitator (16) comprises a blade assembly of a plurality of blades (28,29,30,31) extending outwardly from a lateral surface of the drive shaft (18). The motor (14) is operatively connected to the proximal end of the drive shaft (18) and is operable to rotate the blade assembly in order to impart motion to water retained within the water retention structure (see Figures 1, 2 & 4 and column 2 line 45-column 3 line 60).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman in view of Earhart (USPT 3,836,130). Haegeman teaches the system as claimed except Haegeman does not teach a switch, timer or sensor for selectively activating and

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deactivating the motor. Earhart teaches a liquid aerating apparatus comprising a motor (13), an agitator (11) and a switch (51) that controls the power to the motor (13) (see Figures 1 & 4, column 2 lines 29-58, and column 4 lines 52-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Haegeman to incorporate a switch controlling power to the motor of Haegeman as taught by Earhart for the purpose of providing the capability to control the power to the motor without the necessity of manually connecting the motor from its power source.

9. Claims 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman in view of Wright.

Regarding Claims 27 and 31 Haegeman teaches an apparatus for treating liquids comprising a water agitation system that is positioned within a water retention structure that receives and retains water. The system comprises a main body (12) positioned within a water retention area of the water retention structure. The main body (12) comprises a base (14). Support members comprising a plurality of legs (26) support the main body (12) above a bottom surface of the water retention structure. The legs (26) extend downwardly from the main body (12). An agitator (20) is operatively connected to a motor (16). The agitator (20) is connected to the distal end of a drive shaft (24) that extends outward from the main body (12). The agitator comprises a blade extending from the lateral surface of the drive shaft (24). The drive shaft (24) is rotatably driven by the motor (16) in order to impart motion to water retained within the water retention structure (see Figure 1 and column 2 line 39-column 3 line 6). Haegeman does not teach a cover that with the base defines an inner compartment between the base and the cover and that the motor is positioned within this inner compartment. Wright teaches an aerator for

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live bait bucket comprising a motor (14) and agitator (16). Wright teaches that the motor (14) is waterproofed to prevent damage (column 3 lines 57-60). It is considered, then, that the main body comprises a base (12) removably secured to a cover that encases the motor (14) in an inner compartment defined between the cover and the base (12) with a seal member interposed between the cover and the base (12) (see Figures 1, 2 & 4 and column 2 line 45-column 3 line 60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to waterproof the motor in the apparatus of Haegeman by encasing the motor in a compartment defined between the base of Haegeman and a cover with a seal member interposed between the base and cover as taught by Wright for the purpose of preventing damage to the motor of Haegeman that could be caused if the motor were exposed to water or poor weather.

Regarding Claims 28-30 the apparatus of Haegeman is considered capable of being used in a basin of a birdbath, a livestock water trough, a swimming pool, a water tower or a pond.

Regarding Claim 32 Haegeman does not teach that the motor is battery powered. Wright teaches that the motor (14) is battery powered (see column 2 line 66-column 3 line 8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to power the motor of Haegeman with batteries as taught by Wright for the purpose of providing the apparatus of Haegeman with a portable power source.

10. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman and Wright as applied to claim 27 above, and further in view of Cushman. Haegeman does not teach that the motor is electrically connected to a standard electrical outlet. Cushman teaches a recirculating fountain comprising a motor (24) and agitator (14). The motor (24) is powered through leads (52) and is considered to be capable of being electrically connected to a standard



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electrical outlet (see Figures 1-4 and column 1 line 63-column 2 line 68). It would have been obvious to one of ordinary skill in the art at the time the invention was made to power the motor of Haegeman by electrically connecting it to a standard electrical outlet as taught by Cushman for the purpose of providing a permanent power source to the motor of Haegeman so as to reduce necessary maintenance on the apparatus of Haegeman.

11. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haegeman and Wright as applied to claim 27 above, and further in view of Earhart. Haegeman does not teach a switch, timer or sensor for selectively activating and deactivating the motor. Earhart teaches a liquid aerating apparatus comprising a motor (13), an agitator (11) and a switch (51) that controls the power to the motor (13) (see Figures 1 & 4, column 2 lines 29-58, and column 4 lines 52-61). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Haegeman to incorporate a switch controlling power to the motor of Haegeman as taught by Earhart for the purpose of providing the capability to control the power to the motor without the necessity of manually connecting the motor from its power source.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Eaton (USPT 4,681,711) discloses a method and apparatus for aeration of wastewater lagoons comprising a motorized agitator powered by an electric cable. Ellsworth (USPT D457,595) discloses a tripod-floating mount for a pond aerator. Hill (USPT 4,748,808) discloses a fluid powered motor-generator apparatus comprising a generator assembly placed in a compartment between a cover and base. Malina (USPT 4,448,685) discloses an aerating apparatus utilizing rotating impeller vane comprising a support. Mineau (USPT 4,216,091)

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discloses a water aerator comprising a motor, an agitator and a support assembly. Poppe (USPT 2,272,582) discloses a pond and fish bowl comprising a water wheel. Sumino (USPT 5,807,151) discloses a propeller for marine propulsion via a boat engine comprising a motor, a drive shaft and an agitator that imparts motion to water. Von Berg (USPT 5,356,569) discloses a liquid aerating apparatus comprising a motor, drive shaft and agitator that are supported on the side of a water retention structure. Yoshinaga (USPT 4,086,306) discloses a centrifugal pump comprising a motor, a drive shaft and agitator comprising a blade assembly and legs for supporting the pump. Belmonte (FR 2517564) discloses a high-speed rotary aeration device comprising a motor-driven rotor supported by three floats on the water surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John W. Zerr whose telephone number is (703) 306-0153. The examiner can normally be reached on M-Th. 8:00am-5:30pm, F 8:00am-4:30pm, alt. F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWZ  
6/23/04



MICHAEL J. CARDONE  
SUPERVISORY PATENT EXAMINER